

AMENDMENT AND RESPONSE UNDER 37 C.F.R § 1.111  
U.S. Application Serial No. 09/842,111

In the Claims: ✓

Please cancel Claims 12-16 and 23-25 without prejudice or disclaimer.  
Please amend the claims as indicated:

- A2
6. A method of determining the relative level of Dihydropyrimidine dehydrogenase (*DPD*) gene expression in a tissue sample comprising:
- (a) obtaining a tumor sample from a patient;
  - (b) isolating mRNA from said tumor sample;
  - (c) determining the amount of *Dihydropyrimidine Dehydrogenase (DPD)* mRNA by amplifying the mRNA using an oligonucleotide primer having the sequence of SEQ ID: 1, or an oligonucleotide primer at least or about 80% identical therewith and hybridizes to a complement of SEQ ID NO: 1 under stringent conditions; wherein said isolated and purified oligonucleotide is capable of amplifying a portion of the 5' untranslated region and Exon 1 of a *Dihydropyrimidine Dehydrogenase (DPD)* mRNA isolated from fixed and paraffin embedded (FPE) tissue when used with SEQ ID NO: 2,
- and;
- an oligonucleotide having the sequence SEQ ID: 2 or an oligonucleotide primer at least or about 80% identical therewith and hybridizes to a complement of SEQ ID NO: 2 under stringent conditions; wherein said isolated and purified oligonucleotide is capable of amplifying a portion of the 5' untranslated region and Exon 1 of a *Dihydropyrimidine Dehydrogenase (DPD)* mRNA isolated from fixed and paraffin embedded (FPE) tissue when used with SEQ ID NO: 1;
- (d) comparing the amount of Dihydropyrimidine dehydrogenase (*DPD*) mRNA from step (c) to an amount of mRNA of an internal control gene.

- A3
9. The method of claim 8, wherein the tumor sample is embedded in paraffin after being fixed.

- A4
17. A method of determining the relative level of Dihydropyrimidine dehydrogenase (*DPD*) gene expression in a tissue sample comprising:
- (a) obtaining a tumor sample from a patient;
  - (b) isolating mRNA from said tumor sample;
  - (c) determining the amount of *Dihydropyrimidine Dehydrogenase (DPD)* mRNA by amplifying the mRNA using an oligonucleotide primer having the sequence of SEQ ID: 7, or an oligonucleotide primer at least or about 80% identical therewith and hybridizes to a complement of SEQ ID NO: 7 under stringent conditions;

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wherein said isolated and purified oligonucleotide is capable of amplifying a portion of Exon 6 of a *Dihydropyrimidine Dehydrogenase (DPD)* mRNA isolated from fixed and paraffin embedded (FPE) tissue when used with SEQ ID NO: 8,

and;

an oligonucleotide having the sequence SEQ ID: 8 or an oligonucleotide primer at least or about 80% identical therewith and hybridizes to a complement of SEQ ID NO: 8 under stringent conditions; wherein said isolated and purified oligonucleotide is capable of amplifying a portion of Exon 6 of a *Dihydropyrimidine Dehydrogenase (DPD)* mRNA isolated from fixed and paraffin embedded (FPE) tissue when used with SEQ ID NO: 7;

- (d) comparing the amount of the mRNA from step (c) to an amount of mRNA of an internal control.

19. The method of claim 17, wherein the a tumor sample is embedded in paraffin after being fixed.

26. The method of any one of claims 6 or 17; wherein the at least one tissue sample contains bronchoalveolar tumor tissue, small bowel tumor tissue or colon tumor tissue.

**REMARKS**

Claims 12-16 and 23-25 are canceled without prejudice or disclaimer. Applicant wishes to pursue the subject matter of these claims in co-pending application 09/879,217 (Atty. Docket: 11220/129). Claims 6-11, 17-22 and 26 are now pending.

Claims 6, 9, 17, 19 and 26 have been amended. Support for these amendments may be found throughout the specification but particularly on page 9, lines 10-18, page 10, line 19 to page 11, line 16, as well as in Example 3 on pages 23-24. Claim 26 is amended to remove dependency on non-elected claims. No new matter is added by this amendment to the subject application.